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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/583,254

10/27/2008

Gabriel Martinez Navarro

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SUGHRUE MION, PLLC  
2100 PENNSYLVANIA AVENUE, N.W.  
SUITE 800  
WASHINGTON, DC 20037

EXAMINER

LONG, LUANA ZHANG

ART UNIT

PAPER NUMBER

1782

NOTIFICATION DATE

DELIVERY MODE

06/17/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

sughrue@sughrue.com  
PPROCESSING@SUGHRUE.COM  
USPTO@SUGHRUE.COM

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/583,254	MARTINEZ NAVARRO, GABRIEL	
	<b>Examiner</b>	<b>Art Unit</b>	
	LUANA Z. LONG	1782	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

Applicant's amendment to the claims in the reply filed March 28, 2011 is entered.  
Claims 1, 3, 5-15 are currently pending in the application.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 11, 13-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

New claim 11 recites that the perimeter weld is a "non-breakable weld" (see lines 5-6 of the claim). However, applicant's original disclosure does not appear to have written description to support this claim limitation. Page 7, lines 3-12 of applicant's specification discloses that "the welds in the perimeter 14 of the bag can have a much higher resistance than that of the frangible weld 13." Applicant's specification does not support a "non-breakable weld." Therefore, claim 11 does not comply with the written description requirement.

New claim 13 recites that the first and second compartments each has a shorter dimension and a longer dimension and are stacked one after another in a direction of

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the longer dimensions and the pressure-breakable welded seam extends from the second compartment to the first compartment in the direction of the longer dimension. Applicant has not pointed out where this new claim is supported, nor does there appear to be a written description of the claim limitation in the application as filed. The disclosure must describe the claimed invention with all its limitations. See *Tronzon v. Biomet Inc.*, (Fed. Cir. 1998); *Lockwood v American Airlines Inc.*, (Fed. Cir. 1997). "The purpose of the written description requirement is broader than to merely explain how to 'make and use'; the applicant must also convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention." *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991).

Claims 14 and 15 are rejected for their dependence on claim 13.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1, 3, 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayhurst (3,156,352), in view of Navarro (6,589,578), Tuazon et al (EP545025) and Melnick (GB1253271), further in view of Richards et al (EP1201562), Acknin et al (5,962,052) and applicants admission of the prior art (AAPA). Claims 1, 3, 7-10 are rejected essentially for the reasons detailed in the Office Action mailed September 28, 2010.**

Regarding amended claim 1, Hayhurst discloses first and second compartments (compartments A and B, see Figs. 1 and 13) which are separated from one another by a pressure-breakable welded seam (heat seals 14) which extends along an entire width of the bag (see Figs. 1 and 13). The heat seals of Hayhurst are considered “pressure-breakable” since they can be disrupted and peeled apart by pulling on pull tabs (13a and 13b) adjacent to the seals (see Figs. 1, 4 and 13; col. 1, lines 43-47, col. 3, lines 1-24). The bag of Hayhurst can be formed by two sheets of flexible material, where the flexible material can be formed by plastic laminates comprising three layers: a barrier layer (another layer to make the sheet completely impervious), a plastic strength layer, and a heat-sealable layer (col. 2, lines 13-27).

Hayhurst is silent with respect to the laminate comprising at least one layer of *polyester* barrier which is disposed on an outer face of the bag, and at least one layer of peelable and weldable *polyethylene* which is disposed on an inner face of the bag.

The Richards reference relates to compartmentalized flexible containers for mixing together two different food substances. The flexible container can be comprised of a multi-laminated film comprising an outer surface layer of polyester barrier (PVDC coated PET), a middle layer of polyethylene, which is inherently weldable and peelable, and an inner heat-sealable layer of Surlyn.

Since Hayhurst discloses using thermoplastic polymeric film capable of being heat sealed (col. 2, lines 16-17), since polyethylene is a thermoplastic polymer widely utilized in food packaging and capable of being heat sealed, since polyethylene/polyester laminates are well-established in the art, it would have been

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obvious to one having ordinary skill in the art at the time of the invention to have the laminate of Hayhurst comprise an outer polyester barrier layer, such as disclosed by Richards, and a polyethylene layer on an inner face of the bag, since the particular conventional packaging materials one employs is seen to have been an obvious result effective variable routinely and obviously determinable.

Regarding new claim 11, Hayhurst discloses that the heat seals 14 must be constructed in such a manner that they can be disrupted with forces considerably less than that required to break the side-walls, and that the strength of the seals 14 can be controlled by a variety of factors, such as the area of the heat seal, embossment on the heat sealing bars, temperature employed for the sealing operation, pressure between the heat sealing bars, and the sheet material employed (col. 2, lines 53-62).

Therefore, since it was known that sealing temperature affects the strength of the heat seal, it would have been obvious to one having ordinary skill in the art at the time of the invention to construct the pressure-breakable welded seam (heat seals 14) of Hayhurst by a lower temperature, and to construct the perimeter seam by a higher temperature in order to obtain a higher strength perimeter weld. The perimeter weld of Hayhurst is interpreted to be "non-breakable" since it is not intended to be broken during the breaking away of compartment seals 14.

Regarding claim 12, since the outer layer of the package of Modified Hayhurst is a polyester barrier layer, it would be expected that the polyester layer would be capable of achieving the result of substituting an air inside the container with a modified atmosphere to thereby increase a life of the dried egg housed in the first compartment.

Regarding claim 13, Hayhurst's first and second compartments each inherently has a shorter dimension and a longer dimension and are stacked one after another in a direction of the longer dimensions, and the pressure-breakable welded seam extends from the second compartment to the first compartment in the direction of the longer dimensions (see Figs. 13 and 1).

Regarding claim 14, Figure 4 of Hayhurst shows that the pressure-breakable welded seam comprises outer surfaces which are disposed on a side of the outer face of the bag and extend from the second compartment to the first compartment, and inner surfaces sealed together and disposed between the outer surfaces on a side of the inner face of the bag.

Regarding claim 15, the pressure-breakable welded seam in the multi-component package of Hayhurst is capable of opening between the inner surfaces so that a separation between the first and second compartments is completely removed.

**Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 3 above, and further in view of Yializis (2003/0068459), for the reasons detailed in the Office Action mailed September 28, 2010.**

### ***Response to Arguments***

Applicant's arguments filed March 28, 2011 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, applicant argues that the reference Richards does not teach or suggest the "pressure-breakable welded seam." However, this feature is taught by the primary reference, Hayhurst, as explained in the rejection above and the Office Action mailed September 28, 2011.

Applicant also argues that Hayhurst does not teach that the compartments can be separated from one another by a pressure-breakable welded seam because Hayhurst describes that the compartments are separated by heat seals 14, and that two tabs 13a and 13b are provided to separate the seals. This argument is not persuasive because, first of all, applicant's invention does not distinguish a "welded seam" from a heat seal. One having ordinary skill in the art would recognize that a heat seal is a welded seam, and that the terminology used is merely semantics, not differences in material or structure. Furthermore, the heat seals of Hayhurst are considered "pressure-breakable" since they are broken by exerting mechanical pressure on the seals via the pull tabs to break them apart.

The rest of the arguments on pages 6-8 of the Remarks are moot in view of the new grounds of rejection above.



***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUANA Z. LONG whose telephone number is (571)270-1152. The examiner can normally be reached on 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. Z. L./  
Examiner, Art Unit 1782

/Rena L. Dye/  
Supervisory Patent Examiner, Art Unit 1782